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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-927

FOREST HILLS UTILITY COMPANY,
Petitioner,

vs.

IRA L. WHITMAN, DIRECTOR OF ENVIRONMENTAL PROTECTION,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Ohio

BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-927

FOREST HILLS UTILITY COMPANY,
Petitioner,

vs.

IRA L. WHITMAN, DIRECTOR OF ENVIRONMENTAL PROTECTION,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Ohio

BRIEF FOR RESPONDENT IN OPPOSITION

Respondent respectfully prays that the Petition for a Writ of Certiorari to review the orders of the Supreme Court of Ohio entered October 4, 1974, be denied.

Counterstatement of Question Presented

Whether it is a legitimate exercise of state police power not in contravention of the Fourteenth Amendment to the Constitution of the United States for the Ohio Director of Environmental Protection to order a public utility company operating a water works to open its lines and pipes to water from an adjacent municipal water supply system in order to protect the public health from the danger of water contamination posed by the utility company's inadequate water supply?

Statement of the Case

Petitioner is a public utility company operating a water supply system serving a subdivision of the City of Heath, Ohio, named Forest Hills. On October 10, 1973, respondent Director of the Ohio Environmental Protection Agency issued Findings and Orders with respect to such water supply system, and it is these Findings and Orders (57-60*) which are the subject of this petition. These Findings and Orders were issued subsequent to a hearing which had been held on August 16, 1973.** Respondent's authority to issue these Findings and Orders is found in Ohio Revised Code Sections 6111.12 through 6111.30, and in particular Sections 6111.16 and 6111.17 (70-71).

Respondent found petitioner's public water supply to be "inadequate", and as a result of such inadequacy he found the public health of individuals in that area to be endangered. Acting under the substantive authority of Sections 6111.16 and 6111.17, Ohio Revised Code, he ordered petitioner to permit the entry of water from the City of Heath's public water works into petitioner's pipelines serving the residents of the Forest Hills subdivision, prohibited tampering with or hindering the

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*Unless otherwise designated, all numerical references in parentheses are to page numbers of the petition and appendices thereto.

**The petitioner's statement of the case is largely devoted to a description of completely irrelevant proceedings in a separate set of appeals from an emergency order (an order issued without a hearing) issued by respondent on July 9, 1973, pursuant to different statutory authority. On January 29, 1975, after the petition was filed, the Ohio Supreme Court in a decision (*Forest Hills Utility Co. v. Whitman*, 41 O.S. 2d 25) based entirely upon construction of Ohio statutes held that the statutory provision in question, Ohio Revised Code Section 6111.06(C), did not authorize the issuance of emergency orders in the public water supply area but only in the water pollution area. This decision and the procedurally complicated chain of appeals which led to it have nothing whatsoever to do with the claims raised in this petition.

passage of water from the City of Heath into petitioner's system and into the homes of the Forest Hills' residents, ordered that petitioner take action to guard against contamination of the City of Heath's water works by petitioner's system, and directed that Heath's water continue to be allowed to flow through petitioner's pipelines until petitioner instituted a public water supply adequate to protect the public health (59-60).

Pursuant to Section 3745.04, Ohio Revised Code, respondent's Findings and Orders were appealed to the Ohio Environmental Board of Review, which rendered its "Findings of Fact and Final Order" on December 13, 1973, affirming respondent's order and directing the petitioner to comply therewith (24-56). In describing petitioner's water supply system, the Board noted that there was "ample and unrebutted testimony of an inadequate system for many years" (42), that the "inadequacy has been protracted for over three years, that there is no indication of any likely correction of that inadequacy in the foreseeable future" (46), and that the "inadequacy exposes a substantial population to the danger of a contaminated water supply" (46).

The Board found "that the failure or inability of the [petitioner] to make its admittedly inadequate water supply system adequate posed a danger to public health both to the persons directly served by [petitioner's] water supply system and indirectly to other persons potentially subject to risk of infection from the health hazard to which the population served by [petitioner] has been, and is, exposed" (52), and it found that the "long-protracted inadequacy of the [petitioner's] water supply system" justified issuance of respondent's order requiring petitioner to receive city water in its water supply system (52).

On May 21, 1974, the Court of Appeals of Franklin

County, State of Ohio, rendered a decision affirming the Ohio Environmental Board of Review (19-23) on direct appeal pursuant to Section 3745.06, Ohio Revised Code. The Court of Appeals' noted that petitioner's water supply system needs, but does not have, elevated storage capacity in a minimum amount of 50,000 gallons, and it noted that the peak demand for water in the subdivision was approximately 70 gallons per minute more than the system's maximum rated capacity (18-19). The Court of Appeals indicated that low pressure in petitioner's water supply system creates a potential for back-syphonage of contaminated waters into the water supply and thus constitutes a health hazard (19). The court found that respondent's order of October 10, 1973 "[i]n essence . . . required [petitioner] to provide a safe water supply" (22).

Petitioner filed a Notice of Appeal to the Ohio Supreme Court, claiming both that the case involved a question of "public or great general interest" and a substantial constitutional question (two separate bases for Ohio Supreme Court review of a case, Ohio Constitution, Article IV, Section 2). Ohio Supreme Court Rule II provides that the filing of a Notice of Appeal shall be considered as a motion to certify the case for review (to consider questions of "public or great general interest"), and that where a claim is made that a case also involves a constitutional question (where there is an appeal as of right), the Ohio Supreme Court will, *sua sponte*, consider the case as on a motion to dismiss the appeal as one not involving any substantial constitutional question.

Petitioner filed a memorandum in support of claimed jurisdiction in the Ohio Supreme Court, which in accordance with the above procedure, serves both as a memor-

andum in support of the motion to certify the case for review and a memorandum in opposition to the motion to dismiss the appeal for want of a substantial constitutional question. Respondent filed a memorandum opposing jurisdiction, and on October 4, 1974, the Ohio Supreme Court overruled the motion to certify the record (61) (i.e., determined no case of "public or great general interest" to be presented) and dismissed the appeal for the reason that no substantial constitutional question was presented (62). Rehearing was denied on November 1, 1974 (63).

Reasons for not Granting the Writ

I.

To The Extent That Any Federal Question Of Substance Was Presented To The Ohio Supreme Court, It Was Decided In Accord With Applicable Decisions Of This Court

As can be seen from even a cursory review of the decisions of the various tribunals which have reviewed respondent's order, respondent was presented with a serious threat to the public health posed by the petitioner's water supply operations. The failure of petitioner's wells to meet the demands for water posed by the subdivision of Forest Hills was creating a situation where contaminated water might be back-syphoned into the water mains and, consequently, into the homes of the Forest Hills' residents. Respondent, in the exercise of the police power of the State of Ohio clearly committed to him by Sections 6111.16 and 6111.17, Ohio Revised Code (70-71), after an investigation and hearing, took measured and reasonable steps to protect the public health by requiring that petitioner permit water from

the nearest available alternative source of supply, the Heath municipal water supply system, to be channelled into petitioner's water pipes and, subsequently, into the homes of persons supplied by petitioner's water supply company.

One can hardly imagine a more reasonable and temperate solution to this serious health problem. Petitioner was not directed to cease all operations, nor was it directed to cease collecting payments from its customers for the water supply. In fact, petitioner was not even directed to pay for the water being supplied to petitioner by the City of Heath. The order is of limited duration, terminating once petitioner can make changes in its water supply system so as to insure an adequate public water supply which will not pose a threat to public health. Should petitioner's revenues be insufficient, as it contends, to cover the costs of making the improvements required as a result of respondent's order, it is entitled pursuant to Section 6111.23, Ohio Revised Code, to make application to the Ohio Public Utilities Commission for rate increases sufficient to cover any necessary improvements.

It is an elementary principle of constitutional law that such a reasonable and legitimate exercise of the police power of the State cannot be construed as the taking of private property without due process of law in contravention of the Fourteenth Amendment to the United States Constitution, as petitioner contends, *New Orleans Public Service, Inc. v. City of New Orleans*, 281 U.S. 682 (1930); *Atchison, Topeka and Santa Fe Railway Company v. Public Utilities Commission of California*, 346 U.S. 346 (1953). Indeed, in both of the above cases the private parties were required to undertake costly improvements at their own expense in order to remedy

threats to public safety, and no violation of the due process clause was found. It would appear that petitioner has not been required to incur any additional expense as a result of opening its water lines to municipal water, and that it is protected against loss of reasonable return on its investment resulting from the added costs of future improvements by Section 6111.23, Ohio Revised Code.

The petition itself contains no authority suggesting that an exercise of state police power to protect public health can constitute a taking of property in violation of the due process clause. The several due process clause cases cited by petitioner simply stand for the undisputed proposition that private property cannot be appropriated for a public purpose without due compensation. However, the *New Orleans Public Service* case, 281 U.S. at 687, states that "[i]t is elementary that enforcement of uncompensated obedience to a regulation passed in the legitimate exertion of the police power is not a taking of property without due process of law". The "interference" with property rights in this case is at most the minimal burden of requiring petitioner to allow its pipes to be used for the supply of city water in order to avoid a threat to the public health. This is substantially less of an interference with property rights than was sustained by this court in the *New Orleans Public Service* case.

The bulk of petitioner's statement of its reasons for granting the writ (8-11) is devoted to an involved discussion of why petitioner feels that the particular order in question was either not authorized by Ohio statutory law, or was authorized only by certain provisions of Ohio law which petitioner claims were not utilized in this case. These arguments do not raise any federal question, as required by Rule 19 of the Supreme Court Rules, and

indeed are those very non-constitutional arguments upon which petitioner failed to prevail before the Ohio Supreme Court, the court of last resort with respect to construction and interpretation of Ohio's statutes.

Petitioner would have this court believe that there is a second question presented for consideration, namely whether or not respondent's order in some way compels petitioner, in claimed violation of the due process clause, to supply water to customers who have refused to pay their water bills. It is a distortion of respondent's order to view it as requiring petitioner to render service to non-paying customers.* It is precisely because appellant was *not* rendering adequate service resulting in the danger of a health emergency that respondent was authorized by law to provide that the water supply service be rendered through use of the City of Heath's, *not* petitioner's, water supply.

The petition should be denied for failure to present any federal question of substance decided not in accordance with applicable decisions of this court. Rule 19, Rules of the United States Supreme Court.

II.

The Writ Should Be Denied Because Petitioner Is Requesting This Court To Decide A Federal Question Technically Presented To The Courts Below But Not Fully Briefed Or Argued.

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* Petitioner apparently takes this position because the order required that the Heath water be allowed to flow into petitioner's pipelines "and into the dwellings of the residents of the subdivision" (59). The word "dwellings" is obviously used generically, and not with respect to any particular house, so as to prevent a situation where the Heath water might not be used for its intended purpose.

Rule 19, Rules of the United States Supreme Court, requires that this court's judicial discretion to review on writ of certiorari should be exercised only where there are special and important reasons therefor, such as where a state court has "*decided* a federal question of substance" (emphasis added). It is true that the Ohio Supreme Court "decided" petitioner's due process claim under the Fourteenth Amendment, but it did so in only the most narrow, technical sense because petitioner failed to place any reliance upon its Fourteenth Amendment claims in the proceedings below, and it is apparently intending to brief them fully for the first time only before this court.

However, even *assuming* the court technically has jurisdiction over the question raised in the petition*, "[t]he presence of jurisdiction upon petition for writ of certiorari does not, of course, determine the exercise of that jurisdiction, for the issuance of the writ is discretionary," *Hammerstein v. Superior Court of California*, 341 U.S. 491, 492 (1951). It is submitted that this court should exercise its discretion to deny the writ under these circumstances, since the efficiency of the judicial process can hardly be served if the proponents of an alleged federal right do not give the lower court adequate opportunity to consider and decide the question so as to minimize the necessity of occupying the limited time of the United States Supreme Court.

Petitioner did indeed claim a substantial constitutional question in filing its Notice of Appeal (Appendix A hereto) to the Ohio Supreme Court from the Franklin

* The question of jurisdiction itself may be in some doubt since the court has held that a simple statement in the state supreme court that a party was being deprived of liberty without due process of law was insufficient to raise a federal question and confer jurisdiction, *Thomas v. State of Iowa*, 209 U.S. 258 (1908).

County Court of Appeals. It made this claim in addition to a claim that the case was one of "public or great general interest", and either such claim may be the basis of Ohio Supreme Court jurisdiction under the Ohio Constitution, Article IV. Section 2. Since the claim was made in the Notice of Appeal, and since an appeal on such grounds would be one as of right, the Ohio Supreme Court undoubtedly felt compelled to dismiss for want of a substantial constitutional question (62), in addition to its refusal to certify the case on non-constitutional grounds (61). However, petitioner's own briefs below establish that it never relied seriously upon its constitutional claim and did not press it either before the Franklin County Court of Appeals or the Ohio Supreme Court.

In petitioner's brief as appellant in the Franklin County Court of Appeals (Table of Contents and Table of Authorities appended hereto as Appendix B) none of its assignments of error involved questions of federal constitutional law, and no cases supporting a due process claim were cited (indeed, the Fourteenth Amendment is not even cited). In two places in its brief, petitioner made reference to an alleged deprivation of unspecified constitutional rights. The Court of Appeals' decision (17-23) does not even mention a federal constitutional question.

Although, as noted above, the Notice of Appeal to the Ohio Supreme Court did claim a "substantial constitutional question", that claim was not briefed in petitioner's memorandum asking the Ohio Supreme Court to take jurisdiction (which serves as a brief opposing the Ohio Supreme Court's *sua sponte* motion to dismiss the appeal for want of a substantial constitutional question, Rule II, Ohio Supreme Court Rules). Indeed, the only federal authority cited in that brief is the Fourteenth

Amendment to the United States Constitution itself, and that citation appears in a single conclusory allegation in the memorandum to the effect that the order in question takes private property for public use without just compensation contrary to the Fourteenth Amendment. Perhaps most revealing, the conclusion (p. 27 herein) to this memorandum relies only upon *non-constitutional* grounds in asking the court to take jurisdiction. No claim is even made that a substantial constitutional question has been presented (petitioner's Table of Contents, Propositions of Law, Table of Authorities and Conclusion to its memorandum are appended hereto as Appendix C).

Finally, petitioner has filed a Supplement to the Petition, claiming that respondent failed to follow the procedures set forth in Sections 6111.16 and 6111.17, Ohio Revised Code, in issuing the order in question. Whether or not respondent followed such procedures involves a question of construction of *state* statutes, and petitioner has failed to persuade the court of last resort for construction of state statutes, the Ohio Supreme Court, that its view of these statutes is correct. However, even *assuming* the procedures not to have been followed and that petitioner's claim rises to one of due process violation (petitioner does not deny that there was a hearing prior to the order, at which it appeared and of which it had been notified) (see 41, 49), it is a claim of *procedural* due process (not *substantive*, as in the Petition), and no such claim was presented to the Ohio Supreme Court. This court would have no jurisdiction to hear such a claim. *Thomas v. State of Iowa*, 209 U.S. 258 (1908).

The petition should be denied as a result of petitioner's failure to brief and argue the alleged federal ques-

tion to the state courts so as to provide them with adequate opportunity to consider and decide the constitutional question alleged.

Conclusion

For the reasons set forth above, the petitioner should be denied a writ of certiorari to review the orders of the Ohio Supreme Court.

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February 26, 1975

APPENDIX "A"

COURT OF APPEALS,

FRANKLIN COUNTY, OHIO

Case No. 73AP-487

Forest Hills Utility Company,

Appellant,

v.

Ira L. Whitman, Director of Environmental Protection,

Appellee.

NOTICE OF APPEAL

Forest Hills Utility Company, appellant herein, thereby gives notice of its appeal to the Supreme Court of Ohio from the judgment entered herein on June 6, 1974, affirming the orders of the Environmental Board of Review.

This case did not originate in the Court of Appeals, but involves a substantial constitutional question and is a case of public or great general interest.

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APPENDIX "B"

COURT OF APPEALS,

FRANKLIN COUNTY, OHIO

Case No. 73AP-487

Forest Hills Utility Company,

Appellant,

v.

Ira L. Whitman, Director of Environmental Protection,

Appellee.

BRIEF OF APPELLANT

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APPENDIX "C"

THE SUPREME COURT OF OHIO

Case No. 74-659

Forest Hills Utility Company

Appellant,

v.

Ira L. Whitman, Director of Environmental Protection

Appellee.

MEMORANDUM IN SUPPORT OF JURISDICTION

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§6111.17 ..... 5, 8, 9

§6111.23 10

CONCLUSION

The Director, rather than administering the laws with which he is charged, has chosen to place the authority of the State of Ohio on the side of appellant's nonpaying customers, notwithstanding the fact that appellant's rates and charges for sewer and water services are strictly in accordance with the order of the Public Utilities Commission of Ohio, and the judgment of this Court.

For the foregoing reasons, the Court should find and declare that the Director of Environmental Protection is authorized to proceed against a public water supply or water works company only pursuant to the provisions of §§6111.12 to 6111.20, Revised Code, after notice and hearing, and in no event is the Director of Environmental Protection authorized to compel a water works company to serve customers who have failed and refused to pay the lawful rates and charges for such water service.

Clearly, a case involving such important issues is one of public or great general interest within the meaning of §2, Article IV, Ohio Constitution. Accordingly, this Court should exercise its jurisdiction to review the case and establish the law for the State of Ohio.

Respectfully submitted,
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APPENDIX "D"

OHIO REVISED CODE

§3745.04 Appeals to environmental board of review.

As used in this section, "any person" means any individual, any partnership, corporation, association, or other legal entity, or any political subdivision, instrumentality, or agency of a state, whether or not the individual or legal entity is an applicant for or holder of a license, permit, or variance from the environmental protection agency.

As used in this section, "action" or "act" includes the adoption, modification, or repeal of a regulation or standard, the issuance, modification, or revocation of any lawful order other than an emergency order, and the issuance, denial, modification, or revocation of a license, permit, lease, variance, or certificate, or the approval or disapproval of plans and specifications pursuant to law or regulation thereunder.

Any person who was a party to a proceeding before the director may participate in an appeal to the environmental board of review for an order vacating or modifying the action of the director of environmental protection or local board of health, or ordering the director or board of health to perform an act. The environmental board of review has exclusive original jurisdiction over any matter which may, under this section, be brought before it.

The person so appealing to the board shall be known as appellant, and the director and any party to a proceeding substantially supporting the finding from which the appeal is taken shall be known as appellee, except that when an appeal involves a license to operate a disposal site or facility, the local board of health or the

director of environmental protection, and any party to a proceeding substantially supporting the finding from which the appeal is taken, shall, as appropriate, be known as the appellee. Appellant and appellee shall be deemed to be parties to the appeal.

The appeal shall be in writing and shall set forth the action complained of and the grounds upon which the appeal is based.

The appeal shall be filed with the board within thirty days after notice of the action. Notice of the filing of the appeal shall be filed with the appellee within three days after the appeal is filed with the board.

Within seven days after receipt of the notice of appeal the director or local board of health shall prepare and certify to the board a record of the proceedings out of which the appeal arises, including all documents and correspondence, and a transcript of all testimony.

Upon the filing of the appeal, the board shall fix the time and place at which the hearing on the appeal will be held. The board shall give appellant and the appellee at least ten days' written notice thereof by certified mail. The board shall hold the hearing within thirty days after the notice of appeal is filed. The board may postpone or continue any hearing upon its own motion or upon application of appellant or of the appellee.

The filing of an appeal does not automatically suspend or stay execution of the action appealed from. Upon application by the appellant the board may suspend or stay such execution pending immediate determination of the appeal without interruption by continuances, other than for unavoidable circumstances.

§3745.06 Appeals to courts of appeals.

Any party adversely affected by an order of the environmental board of review may appeal to the court of appeals of Franklin county, or, if the appeal arises from

an alleged violation of a law or regulation, to the court of appeals of the district in which the violation was alleged to have occurred. Any party desiring to so appeal shall file with the board a notice of appeal designating the order appealed from. A copy of such notice shall also be filed by the appellant with the court, and a copy shall be sent by certified mail to the director of environmental protection. Such notices shall be filed and mailed within thirty days after the date upon which appellant received notice from the board by certified mail of the making of the order appealed from. No appeal bond shall be required to make an appeal effective.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of the board. If it appears to the court that an unjust hardship to the appellant will result from the execution of the board's order pending determination of the appeal, the court may grant a suspension of the order and fix its terms.

Within twenty days after receipt of the notice of appeal, the board shall prepare and file in the court the complete record of proceedings out of which the appeal arises, including any transcript of the testimony and any other evidence which has been submitted before the board. The expense of preparing and transcribing the record shall be taxed as a part of the costs of the appeal. The appellant, other than the state or a political subdivision, or an agency of either, or any officer thereof acting in his representative capacity, shall provide security for costs satisfactory to the court. Upon demand by a party the board shall furnish at the cost of the party requesting the same a copy of such record. In the event the complete record is not filed within the time provided for in this section, any party may apply to the court to have the case docketed, and the court shall order such record filed.

In hearing the appeal, the court is confined to the record as certified to it by the board. The court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the board.

The court shall conduct a hearing on the appeal and shall give preference to all proceedings under this section over all other civil cases, irrespective of the position of the proceedings on the calendar of the court. The hearing in the court of appeals shall proceed as in the case of a civil action, and the court shall determine the rights of the parties in accordance with the laws applicable to such action. At the hearing, counsel may be heard on oral argument, briefs may be submitted, and evidence introduced if the court has granted a request for the presentation of additional evidence.

The court shall affirm the order complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it shall reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. When the court finds an ambient air quality standard, an emission standard, or a water quality or discharge standard to be deficient, it shall order the director of environmental protection to modify the standard to comply with the laws governing air or water pollution. The court shall retain jurisdiction until it approves the modified standard. The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. Such appeals may be taken by any party to the appeal and shall proceed as provided in Chapter 2505. of the Revised Code.

UNITED STATES SUPREME COURT RULES

PART V. JURISDICTION ON WRIT OF CERTIORARI

Rule 19. Considerations governing review on certiorari

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

OHIO SUPREME COURT RULES

Rule II

DETERMINATION OF JURISDICTION ON APPEALS FROM COURTS OF APPEALS

Section 1. Effect of Failure to Comply with Required Filing of Notice of Appeal in Supreme Court

If a copy of the notice of appeal is not filed or offered for filing in the Supreme Court in compliance with Sections 1, 2, 3, 5, 6 and 7 of Rule I, the Supreme Court may refuse to accept such copy for filing or may dismiss the appeal, either on its own motion or on motion of a party, for lack of prosecution.

Section 2. Notice of Appeal Filed in the Supreme Court Considered as Motion to Certify or for Leave to Appeal

Where the order, judgment or decree of the Court of Appeals that is appealed from was rendered in an action not originating in the Court of Appeals, the copy of the notice of appeal filed in the Supreme Court will be considered as a motion for leave to appeal in a felony case or as a motion to certify in any other case. No separate motion to certify or for leave to appeal need be filed.

Section 3. Consideration as to Existence of Constitutional Question

(A) If an appellant contends that a case involves a substantial constitutional question and also contends that such case is of public or great general interest, it is necessary to file only one notice of appeal. (See Rule I (A) (a) and (c).)

(B) Where appellant claims that he has an appeal as of right (*i.e.*, that the case involves a constitutional question), the Supreme Court will, *sua sponte*, consider the case as on a motion to dismiss the appeal as one not involving any substantial constitutional question and will consider such motion to dismiss at the same time that it considers any motion to certify or motion for leave to appeal in the case.

Section 4. Memorandum in Support of Claimed Jurisdiction of Supreme Court

(A) A motion to certify, a motion for leave to appeal or a claimed appeal as of right shall be supported by a memorandum which shall contain:

(1) The same matters required in a brief on the merits (Rule V, Section 1) except that any argument should be limited to presenting with accuracy, brevity and clarity only what is essential to a ready and adequate understanding of the proposition of law to which it relates and why that proposition should be adopted.

(2) Only to the extent not indicated by such propositions of law and such argument, a concise statement of why the case is of public or great general interest, why a substantial constitutional question is involved or why leave to appeal should be granted, such statement to follow the argument.

(B) The failure of appellant to present with accuracy, brevity and clarity whatever is essential to a ready and adequate understanding of the questions requiring consideration will be sufficient reason for denying the motion to certify or for leave to appeal or for dismissing

an appeal as of right on the ground that no substantial constitutional question is involved.

Unless the "statement of the propositions of law presented" clearly states some proposition of law which could serve as a syllabus, the court may dismiss any motion or appeal *sua sponte.*

(Sections 5-10 omitted)

Art. IV, §2 The supreme court.

(A) The supreme court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. A majority of the supreme court shall be necessary to constitute a quorum or to render a judgment.

(B) (1) The supreme court shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The supreme court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:

(i) Cases originating in the courts of appeals;

(ii) Cases in which the death penalty has been affirmed;

(iii) Cases involving questions arising under the constitution of the United States or of this state.

(b) In appeals from the courts of appeals ln cases of felony on leave first obtained.

(c) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(d) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(e) The supreme court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3 (B) (4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

(C) The decisions in all cases in the supreme court shall be reported, together with the reasons therefor.